IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1045 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATIONAL INSURANCE CO.LTD. - Appellant(s)
Versus
HIRABEN RAMBHAI & 3 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR SURESH M SHAH for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 30.06.86 passed by the Motor Accident Claims Tribunal(Main), Rajkot in MACT No. 408 of 1982 whereby the Tribunal awarded a sum of Rs. 75,050/- towards compensation alongwith interest at the rate of 6% per annum.

2. The original claimants being the heirs and legal representatives of deceased had filed claim petition seeking compensation to the tune of Rs. 80000/- for the

accidental death of the deceased which occurred due to an accident on 10.03.92 at about 2.00 am while the deceased was riding his scooter bearing no. GRC 2192 belonging to one Bavalal Becharbhai Patel- respondent no.4 herein. The scooter driven by the deceased overturned thereby injuring the deceased. He thereafter succumbed to the said injuries. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal erred in holding and assuming that because “any person” can drive the vehicle as per the policy, the risk of that person is covered by the policy. He has contended that the deceased was not covered under the policy as he was neither an employee of the insured nor was any premium paid on his behalf.

3.1 Mr Parikh has relied on the decision of Apex Court in the case of Ramashray Singh v New India Assurance Co. Ltd reported in 2003(10)SCC 664 in order to substantiate his contention and has thereby called for interference of this Court.

4. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the materials

placed on record. From the perusal of the insurance policy held by the respondent no.4 herein for the period 24.03.81 to 23.03.82, it is clear that as per the policy, the driver who was insured is mentioned/defined as

> (a) Any person.
> (b) Provided that the person holds a valid driving license at the time of the accident or had held a permanent driving license (other than a learner's license) and is not disqualified from holding or obtaining such a license.

5. In that view of the matter, it is quite evident that the deceased who was holding a valid driver's license at the time of the accident shall be covered by the policy even though he was not paying any premium. The view taken by the Tribunal is just and proper.

5.1 As far as the decision of the Apex Court in the case of Ramashray Singh(supra) is concerned, the Apex Court has held that the insurance company covers only the person or classes of persons specified in the policy and the same shall not be applicable in the present case as under Section 147, the claimant has tried to include 'driver' in the definition of 'any person' and the same is on the facts and circumstances of the case. However, in the present case, no such clarification is given in the policy. The policy states any person to be a driver

and therefore the contract between the insurance company and the claimant, whosoever it may be, is not necessary.

6. In view of the above, appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//